

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

From: Mr. Jerome K. Hamilton, a/k/a
Cheikh Ahmed Elohim
Plaintiff:
320 East Fifth Street/Apt. 609
Wilmington, Delaware. 19801

Dated: January 26, 2007

TO:

Honorable Judge Gregory M. Sleet
United States District Court for the District of Delaware
Lock Box 19
844 N. King Street
Wilmington, Delaware. 19801

RE: Hamilton/Elohim v. Guessford, et. al.
C.A. No. 04-1422-(GMS).

Dear Honorable Judge Gregory M. Sleet:

I am writing you this letter to report my concerns on the status of the plaintiff above-captioned case:

Issue One: Plaintiff/Jerome K. Hamilton, request this - court intervention. That Mr. Aber, Esquire, have refused to file on plaintiff- behalf his motion to compel discovery, were the defendant's identified as a - "Privilege Log" in a letter on October 19, 2006. Concerning those items which - defendant's claim are protected by the attorney client privilege. The list th- -ree items, which are all emails, of March 27, 2003, June 10, 2003, and October- 2, 2003. This matter can not be resolve discovery disputes, among the parties because it been over (90) days. Plaintiff/Hamilton, discovery cut-off is due - by April 30, 2007. Plaintiff/Hamilton, believe that Mr. Aber, Esquire, is creat- -ing a conflict of interest, concerning above-captioned case. See: (Attached - -Exhibit-"A"). And defendant's argument. See: (Attached Exhibit- "B")....

Issue Two: Plaintiff/Jerome K. Hamilton, request this -- Honorable Court intervention about the dispute. Plaintiff/Hamilton, have requ- -est on several occasions that Mr. Aber, Esquire, write a letter to defendant's /attorney on plaintiff behalf about taking depositions of (Defendant/Taylor)- (Defendant/Carroll)(Defendant/Snyder)(Defendant/McBride)(Defendant/Guessford), (Deputy Principal Assistant/Mr. Carl C. Danberg), (Deputy Attorney General/Stu- -art B. Drowos), (Deputy Attorney General/Loren C. Meyers), (Deputy Attorney - -General/Gregory E. Smith), (Deputy Attorney General/Ophelia M. Waters), and - among others. Plaintiff/Hamilton, discovery cut-off is due on April 30, 2007...

Continue:- Plaintiff/Hamilton, believe that Mr. Aber, Esquire, have cause a conflict of interest by there failure, to find out to what extent anybody relied on the attorney general communications when the defendant's made their decisions by the reason why plaintiff sentence was recalculated on March 21, 1996. Mr. Aber, Esquire, actions is delaying plaintiff case by not immediately taking depositions of the mention person's raised above.

Plaintiff/Jerome K. Hamilton, request this Honorable Court intervention to resolve the discovery dispute, concerning the taking all depositions of defendant's and attorney client privilege about emails issue. If this Honorable Court/order a or schedule a telephone conference plaintiff request - his present, on the phone or face-to-face.

Dated: January 26, 2007

Respectfully Submitted

Jerome K. Hamilton/a/k/a Cheikh A. Elohim

Mr. Jerome K. Hamilton, a/k/a,
Cheikh A. Elohim

Plaintiff:

320 East Fifth Street

Apt. 609

Wilmington, Delaware. 19801

LAW OFFICES
ABER, GOLDLUST, BAKER & OVER

(AN ASSOCIATION OF LAW PRACTICES)
702 KING STREET, SUITE 600
P.O. BOX 1675
WILMINGTON, DELAWARE 19899-1675

GARY W. ABER, P.C.
PERRY F. GOLDLUST, P.A.*
DARRELL J. BAKER, P.A.
SUSAN C. OVER, P.C.
SHAUNA T. HAGAN
SAAGAR B. SHAH

(302) 472-4900
TELECOPIER (302) 472-4920

October 30, 2006

*ALSO ADMITTED IN NEW YORK
**ALSO ADMITTED IN PENNSYLVANIA

Eileen Kelly, Esquire
Deputy Attorney General
Department of Justice
Carvel State Building
820 N. French Street
Wilmington, DE 19801

RE: Hamilton v. State Department of Corrections

Dear Eileen:

I received your letter of October 19, 2006, providing me with a "Privilege Log" of those items which you claim are protected by the attorney client privilege. You list three items, which are all emails, of March 27, 2003, June 10, 2003, and October 2, 2003.

In your answer to the complaint, you have pled as an affirmative defense, that your clients are protected by "Qualified Immunity". As the Third Circuit Court of Appeals has recognized, Qualified Immunity is used to protect officials, who may, overstep constitutional boundaries, but are nevertheless acting in objective good faith. Monteiro v. City of Elizabeth, 436 F.3d 397 (3d Cir. 2006). In order to claim protection of the "Qualified Immunity" doctrine, the defendants will have to demonstrate that they acted in reasonable good faith. Grunke v. Seip, 225 F.3d 290 (3d Cir. 2000).

It is well established that when a party asserts "Qualified Immunity" they have waived the attorney client privilege. Hearn v. Rhay, 68 F.R.D. 574, 581 (E.D. Wash. 1975); cited with approval, U.S. v. Blizerian, 926 F.2d 1285 (2d Cir. 1991); In Re: AT & T Access Charge Litigation, ___ F.Supp.2d ___, 2006 WL 2587607 (D.Nj. 2006); Harter v. University of Indianapolis, 5 F.Supp.2d 657 (S.D.Ind. 1998)(By pleading an affirmation defense of good faith qualified immunity, defendants implicitly waive privilege as to legal advice provided by a state's attorney general).

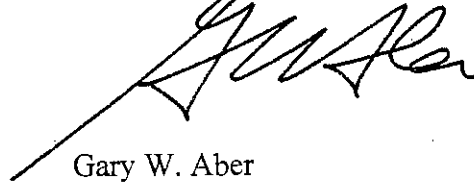
Based upon those arguments, I write to you pursuant to L.R. 7.1.1 and request that you produce documents referred to in your letter of October 19, 2006.

Exhibit- "A"

Eileen Kelly, Esquire
October 30, 2006
Page Two

Thank you for your assistance and cooperation.

Yours very truly,

A handwritten signature in black ink, appearing to read "G. W. Aber", written over a horizontal line.

Gary W. Aber

GWA/mac
cc: Mr. Cheikh Ahmed Elohim

Exhibit- "A"



STATE OF DELAWARE
DEPARTMENT OF JUSTICE



CARL C. DANBERG
 Attorney General

NEW CASTLE COUNTY
 Carvel State Building
 820 N. French Street
 Wilmington, DE 19801
 Criminal Division (302) 577-8500
 Fax: (302) 577-2496
 Civil Division (302) 577-8400
 Fax: (302) 577-6630
 TTY: (302) 577-5783

KENT COUNTY
 102 West Water Street
 Dover, DE 19904
 Criminal Division (302) 739-4211
 Fax: (302) 739-6727
 Civil Division (302) 739-7641
 Fax: (302) 739-7652
 TTY: (302) 739-1545

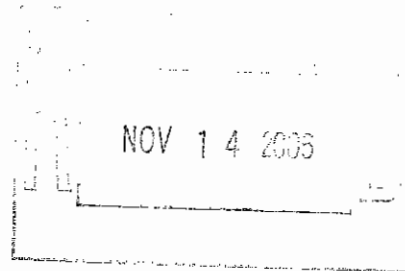
SUSSEX COUNTY
 114 E. Market Street
 Georgetown, DE 19947
 (302) 856-5352
 Fax: (302) 856-5369
 TTY: (302) 856-2500

November 8, 2006

PLEASE REPLY TO [New Castle County-Civil Division]

Gary W. Aber, Esquire
 Aber, Goldlust, Baker & Over
 702 King Street, Suite 600
 P.O. Box 1675
 Wilmington, DE 19899-1675

RE: Hamilton v. Guessford, et al.
C.A. No. 04-1422 - GMS



Dear Gary:

I am writing in response to your letter dated October 30, 2006 in which you request production of the documents identified as privileged in my October 19, 2006 letter to you.

Your position that Defendants have waived the attorney-client privilege by asserting a qualified immunity defense is not supported by the case law. Defendants have not asserted a defense based on the advice of counsel. As the Third Circuit has held, the attorney-client privilege is not waived merely because the party's state of mind is at issue. *Rhone-Poulenc Rorer, Inc. v. Home Indem. Co.*, 32 F.3d 851, 864 (1994). The Third Circuit has specifically rejected the reasoning in *Hearn v. Rhay*, a case which you cite in your letter. *Id.* Finally, you have relied on case law which does not support your argument. For example, *In re AT&T Access Charge Litigation* follows the holding in *Rhone-Poulenc*.

In short, Defendants will not produce documents properly protected from discovery by the attorney-client privilege.

Sincerely,

Eileen Kelly
 Deputy Attorney General

Exhibit- "B"

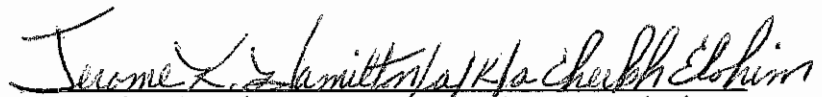
Certificate Of Service

State of Delaware
New Castle County

)
)
) SS:
)

I Plaintiff/Jerome K. Hamilton, hereby certify that on the January 26, 2007, placed in the U.S. Postal Service, copie of (Plaintiff Letter Requesting the for Intervention by the COURT Concerning the Discovery - Dispute). This document will be going to all the people below:

1. Honorable Judge Gregory M. Sleet
United States District Court for the District
of Delaware
Lock Box 19
844 N. King Street
Wilmington, Delaware. 19801-3570
2. Mr. Gary W. Aber, Esquire: (DSB/754)
Law Offices
Aber, Goldlust, Baker, & Over
(An Association Of Law Practices)
702 King Street, Suite 600
Wilmington, Delaware. 19801-1675
3. Eileen Kelly, Esquire:
Deputy Attorney General
Department of Justice
Carvel State Building
820 North French Street
Wilmington, Delaware. 19801
Defendants/Attorney
4. Plaintiff/Jerome K. Hamilton, a/k/a
Cheikh Ahmed Elohim
Plaintiff:
320 East Fifth Street/Apt. 609
Wilmington, Delaware. 19801


Plaintiff/Jerome K. Hamilton, a/k/a
Cheikh Ahmed Elohim